

IN THE HIGH COURT OF JUSTICE
EDO STATE OF NIGERIA
IN THE EKPOMA JUDICIAL DIVISION
HOLDEN AT EKPOMA

BEFORE HIS LORDSHIP HON. JUSTICE J. O. OKEAYA – INNEH ON
TUESDAY THE 28TH DAY OF APRIL, 2020

BETWEEN:

SUIT NO: HEK/43D/2019

MR. OSARUONAMEN TERRY EDOSOMWAN.....PETITIONER

AND

MRS OSARUGUE JANE EDOSOMWAN.....RESPONDENT

JUDGMENT

This is a divorce petition filed on behalf of the petitioner praying this Honourable Court for a dissolution of the marriage between the petitioner and the respondent on the grounds that the said marriage has broken down irretrievably.

The petitioner testified by stating that his name is **OSARUONAMEN TERRY EDOSOMWAN**. He lives at no. 14, Alkali Street off Ekenwan Road, Benin City. He is a businessman and remembers making a written deposition on oath on the 21/8/2019 in respect of this case. Petitioner further stated that he wants to adopt the said written deposition on oath as his evidence before court in respect of this case.

The petitioner's written statement on oath is as follows;

1. *"That I am the petitioner in this suit and by virtue of which I am familiar with the facts of this case.*
2. *That I know the respondent. She is my wife.*
3. *That I married the respondent on the 14th of February, 2013, at the Accra Marriage Registry, Accra, Ghana. I rely on the Marriage Certificate as exhibit in this case,*
4. *That I am a Nigerian, as well as the respondent.*
5. *That I am domicile in Nigeria as well as the Respondent.*
6. *That after the said marriage, the respondent and I live together as Husband and Wife but refused to perform her conjugal rights.*
7. *That since the celebration of our marriage the respondent has maintained a disrespectful and quarrelsome attitude which has put me through serious emotional strain and disruption.*
8. *That the respondent has abandoned and/ or deserted her matrimonial home for over 4(four) years no and she has since returned the bride price to my family.*
9. *That every effort I made, for us to live together as husband and wife was rebuffed by the Respondent who has refused to consummate the marriage and perform his conjugal right rather, she kept telling me*

- on phone that she is no longer interested in the marriage as according to her, she was through with the marriage.*
- 10. That she kept asking me to come and collect the wedding ring from her.*
 - 11. That she kept calling, insulting every members of my family, calling my mother names.*
 - 12. That till date, I do not know her where about as the only last known address of her is no. 200, Siluko Road, Benin City.*
 - 13. That there is no child to the marriage.*
 - 14. That we cohabited in Ghana and thereafter returned to Nigeria and continued with our cohabitation till she deserted her matrimonial home on the 2nd of February, 2015.*
 - 15. That I did not condoned or connived with the respondent on any of the grounds set above.*
 - 16. That I am convinced that by the conduct and utterances of the Respondent, she is not ready for marriage and by her conduct, I cannot reasonably live with her.*
 - 17. That I therefore seek the following reliefs from this Honourable Court :*
 - i. A DECREE dissolving the said marriage between me and the respondent contracted on the 14th of February, 2013.*
 - ii. Such other relief or reliefs as may be just and expedient in the circumstances.*
 - 18. That I depose to this affidavit in good faith believing its content to be true and correct in accordance with the Oath Law."*

Haven adopted his written deposition on oath, petitioner went further to tender the marriage certificate. The said marriage certificate with the heading **MARRIAGE CELEBRATED IN THE PRINCIPAL REGISTRAR OF MARRIAGES OFFICE ACCRA IN GHANA** with license no. SL, 0475156 and Certificate no. RGM 417/2013 dated 14th day of February, 2013 was admitted in evidence and marked **EXHIBIT 'A'**.

The petitioner closed his case and the case was adjourned for cross – examination of the petitioner by the respondent. The case was adjourned to 27/1/2020 for the respondent to cross – examine the petitioner. The respondent was duly served with the hearing notices and the proof of service is in the court's file.

Upon the failure of the respondent to appear in court to cross – examine the petitioner having been duly served with the hearing notice, counsel for the petitioner applied and prayed court to foreclose the respondent from cross examining the petitioner and also to foreclose the respondent for want of diligent prosecution.

Based upon the application of learned counsel to the petitioner the court foreclosed the respondent from cross – examining the petitioner and the petitioner was discharged from the witness box. The court also foreclosed the respondent for want of diligent prosecution. The matter was adjourned for adoption of written address and court ordered hearing notices to be issued/served on the respondent.

The matter came up on the 10/2/2020 for adoption of written addresses by both parties. The respondent was duly served and yet did not file any process nor appear in court. Learned counsel for the petitioner moved to adopt the petitioner written address and prayed court to grant the divorce and all the reliefs as stated therein.

From the petitioner's final written address, learned counsel to the petitioner formulated 2 issues for determination which are;

- a. Whether this Honourable Court has no jurisdiction to hear and determine this petition.
- b. Whether from the totality of evidence in this suit, the petitioner has established his case to be entitled to the reliefs claimed.

Arguing issue one, learned counsel stated that the basis of jurisdiction of a court to entertain such suit is the domicile of the petitioner which could either be by origin or by choice and which the petitioner has shown before this court that both the petitioner and the respondent are domiciled in Nigeria.

He relied on **Section 2(3) of the Matrimonial Causes Act** and the case of **BHOJWANI .V. BHOJWANI (1995) 7 NWLR (PT 407) 349 C. A, SULU GAMBARI J. C. A** where the Court held thus;

“ The issue of domicile is a threshold one which must first be considered because if it is not found that the petitioner is not domiciled in Nigeria, the question of whether the trial court has jurisdiction to entertain the divorce petition will forthwith be settled and that will be the end of the matter.”

He submitted that the evidence of the petitioner's domicile which is Nigeria was not challenged by the respondent and urged this Court to hold that this Honourable Court has jurisdiction to entertain this suit.

On issue 2, learned counsel contended that by the evidence on record, the petitioner has successfully established his case and thus entitled to

the reliefs sought. He relied on the provisions of Section 15(2), (a), (e), and (f) of the Matrimonial Causes Act to state that this Court can hear a petition for a decree of dissolution of marriage to have been broken down irretrievably if, but only if, the petitioner satisfies the court of one or more of the following facts:

a. That the respondent has willfully and persistently refused to consummate the marriage;

e. That the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent does not object to a decree being granted.

f. That the parties to the marriage have lived apart for a continuous period of at least three years immediately preceding the presentation of the petition.

He submitted that the petitioner has satisfied the provisions of Section 15(2), (a), (e), and (f) of the Matrimonial Causes Act and he urged this Court to dissolve this marriage as same has broken down irretrievably.

In order to effectively determine this suit, I hereby adopt the issues formulated by the learned counsel to the petitioner which are hereunder reproduced for better understanding. The issues are;

a. Whether this Honourable Court has no jurisdiction to hear and determine this petition.

b. Whether from the totality of evidence in this suit, the petitioner has established his case to be entitled to the reliefs claimed.

However, before I proceed to resolve the issues for determination above, I would like to state that this petition is unchallenged. The respondent did not appear before this Court neither did she file any process. This Court issued several hearing notices which were served on the respondent but she failed to respond to the summons of this court. In the case of **MTN NIGERIA COMMUNICATIONS LIMITED V. MUNDRA VENTURES NIGERIA LIMITED (2016) LPELR – 40343 (CA) PP 32- 33 PARAS B – A RATIO 15**, the Court held thus,

“The law is well settled that whenever a party had due notice of the hearing of a case against him in Court and he of his own volition fails, refuses or neglects to attend the proceedings, the case as presented by the other party is the case to be considered on the merit and the reason why the did not

participate in the proceedings is of no moment and is thus not the business of the court..."

I must quickly add at this juncture that, the fact that this petition is unchallenged does not entitle the petitioner to automatic victory, he must prove that he is entitled to the reliefs sought. The reliefs sought by the petitioner in this case are;

1. A decree dissolving the marriage between the petitioner and the respondent contracted on the 14th of February, 2013 at the Principal Registrar of Marriage Office, Accra in Ghana.
2. Such other relief or reliefs as may be just and expedient in the circumstances of this case.

This petition is hinged on 15(1), (2), (a), (e), and (f) of the Matrimonial Causes Act M7, Laws of the Federation, 2004. Section 15 (1) provides thus;

"A petition under this Act by a party to a marriage for a decree of dissolution of the marriage may be presented to the Court by either party to the marriage upon the ground that the marriage has broken down irretrievably."

Section 15(2) –

"The Court hearing a petition for a decree of dissolution of a marriage shall hold the marriage to have broken down irretrievably if, but only if, the petitioner satisfies the court of one or more of the following facts –

a. That the respondent has willfully refused to consummate the marriage,

e. That the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent does not object to a decree being granted;

f. That the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation

of the petition and the respondent does not object to a decree being granted.”

The question at this juncture is, does this Honourable Court have the jurisdiction to grant the reliefs sought by the petitioner?

This question weighed heavily on my mind because as we all know, any adjudicatory process conducted without jurisdiction no matter how well conducted is a waste of precious judicial time. The Court in the case of **C.P.C .V. INEC & ORS CA/A/EPT/PRES/1/2011 (R) PP 44 – 45 PARAS F – C RATIO 5** held thus;

“As was ably held per Fabiyi, J. S. C in the recent case of Shelim & Anor .v. Gobang (2009) All FWLR (pt 1866) at 1877 paras A – G ; ‘It is no longer a moot point that the question of jurisdiction is of absolute importance to the adjudicatory process. It is the life wire of any adjudication. Where there is no jurisdiction to hear and determine a matter, everything done in such want of jurisdiction is a nullity...”

Learned counsel to the petitioner stated that the evidence of the petitioner’s domicile clothes this court with jurisdiction to entertain this suit. He relied on the case of **BHOJWANI .V. BHOJWANI (1995) 7 NWLR (PT 407) 349.**

A person’s domicile generally speaking means the place where he has his permanent home and whether he goes east or west, north or south he would always come back to it. See **OMOTUNDE .V. OMOTUNDE (2000) LPELR – 10194 (CA).**

Section 2 (3) of the Matrimonial causes Act provides that a person is domiciled in Nigeria for the purpose of the Act and may institute proceedings under the Act in the High Court of any state whether or not he is domiciled in that particular state.

From the evidence before this Court, both the petitioner and respondent in this case are domiciled in Nigeria and fortunately for the petitioner, the respondent did not challenge the petitioner’s domicile.

I agree with the petitioner’s counsel that the issue of the domicile of the petitioner at the time of the hearing of the petition is vital and germane as it is a condition precedent to the hearing of his petition by any court as reflected in Matrimonial Causes Act. However, the fact that this

marriage sought to be dissolved was contracted outside Nigeria, specifically in Accra, Ghana weighed heavily on my mind.

If I may reiterate, the parties in this petition are domiciled in Nigeria but the case heavily relied upon by the petitioner's counsel - **BHOJWANI .V. BHOJWANI (1995) 7 NWLR (PT 407) 349** is not on all fours with this present case. Exhibit 'A' is the certificate of marriage dated the 14th February, 2013 which shows that the marriage was celebrated in the Principal Registrar of Marriages Office at Accra in Ghana.

The pertinent question at this juncture is, can this Court still entertain this petition?

Ordinarily, Nigerian Courts recognize statutory marriages contracted in Nigeria. However, Section 49 of the Act provides the conditions in which Nigerian Courts will recognize a foreign statutory marriage. Section 49 provides thus;

"Subject to sections 50 to 53, a marriage between parties one of whom is a citizen of Nigeria, if it is contracted in a country outside Nigeria before a marriage officer in his office, shall be as valid in law as if it had been contracted in Nigeria before a registrar in the registrar's office."

Section 50 –

"For the purposes of this Act, every Nigerian Diplomatic or Consular Officer of the rank of secretary or above shall be regarded as a marriage officer in the country to which he is accredited."

Section 51 –

"The office used by a marriage officer for the performance of his Diplomatic or Consular duties shall be regarded as the marriage officer's office for the purposes of this act."

Section 52 –

"Subject to the modifications specified in Section 53 this Act shall apply in relation to a marriage contracted before a marriage officer as nearly as may be as it applies in relation to a marriage contracted before a registrar."

The conditions stipulated in Sections 50 to 53 of the Act are that for such marriage to be recognized and valid under Nigerian law such a marriage must have been contracted before a Nigerian Diplomat or Consular Officer of the rank of Secretary or above at his office. The office used by a marriage officer for the performance of his diplomatic or consular duties shall be regarded as the marriage officer's office for the purposes of the Act.

After a careful but calm perusal of exhibit 'A', the following questions arose;

1. Was the marriage conducted before a Nigerian Diplomat or Consular Officer of the rank of Secretary or above?
2. Was the marriage contracted before a marriage officer?
3. Was the marriage conducted at the marriage officer's office?

Unfortunately, neither the petitioner during his examination in chief nor the petitioner's counsel provided answers to the questions above.

In the case of **STAR DEEPWATER PETROLEUM LIMITED & ORS .V. A. I. C LIMITED & ORS (2015) LPELR – 25387 (CA) P. 41 PARAS A – D RATIO 4**, the Court held thus,

“...I am therefore totally in agreement with the submission of counsel for the appellant that it is not the function of the trial court by its own exercise and ingenuity to supply the evidence or carry out the mathematics of arriving at the answer which only the evidence adduced can supply...”

The law is elementary that, it is not the duty of a court or tribunal or any adjudicating body to go fishing for evidence thereby making a case for any of the parties before it. A court has no duty to bridge the yawning gap in the case of a party. **SEE PASTOR SAM ZEKRON V. UMARU WANCHAR (2018) LPELR – 44492 (CA) PP 29 – 30 PARAS E – B RATIO 3.**

The law is trite that where a statute clearly provides for a particular act to be performed, failure to perform the act on the part of the party will not only be interpreted as a delinquent conduct but will be interpreted as

not complying with the statutory provision notwithstanding that the statute did not specifically provide for a sanction. The Court can, by the invocation of its interpretative jurisdiction, come to the conclusion that failure to comply with the statutory provision is against the party who failed to comply. See the **COUNCIL OF YABA COLLEGE OF TECHNOLOGY .V. NOJEEM OLUKEMI AWONIYI (2016) LPELR 41393 (CA) PP 44- 45 PARA D – D RATIO 2.**

Summarily, even though the evidence led by the petitioner is uncontroverted, answers to the questions which I asked earlier have not been provided and if I may reiterate, it is not my duty to provide answers or fill lacuna for a party in a case.

Be that as it may, I must say that I am in great difficulty as to what order I should make bearing in mind the circumstantial evidence placed before the court. However, there are rules of court governing matrimonial causes in Nigeria which are the Marriage Act and Matrimonial Causes Act & Rules.

In as much as both parties from the evidence of the petitioner in his written deposition stated clearly that the said marriage has broken down irretrievably as seen in paragraphs 6, 7, 8, 9,10, 11, 12, 13, 14, 15 and 16 of the petitioner's written deposition which was adopted by the petitioner during the cause of trial.

Even though the respondent did not contest the petition, the Marriage Act and Matrimonial Causes Act & Rules must be complied with. This was not done in this case because the said marriage was contracted in the Principal Registrar of Marriages Office, at Accra in Ghana which clearly means that the Nigerian Courts cannot have jurisdiction to entertain suits of this nature.

In the final analysis, this petition **HEK/43D/2019** is hereby dismissed for lack of jurisdiction.

**HON. JUSTICE J. O. OKEAYA – INNEH
JUDGE**

28th April, 2020

COUNSEL:

I. ILUENMINOSEN ESQ. learned counsel for the petitioner
No representation for the respondent.